

STANDARD GENERAL TERMS AND CONDITIONS

1. DEFINITIONS.

- A. **Contract or Contractor.** The parties understand that the use of the terms "Contract" and "Contractor" throughout this Agreement shall mean "Grant Agreement" and "Grantee" respectively.
- B. **Contracting Officer.** The person designated to act for the Department in the processing of this Grant Agreement. The person so designated is the Deputy Secretary for Administration.
- C. **Project Officer.** The person designated to act for the Department in administering this Grant.
- D. **Sub-grantee.** The entity with whom the Grantee enters into an agreement to perform work under the Grant Agreement. The term "Sub-grantee" shall include Sub-contractors and any other term the Grantee may use for such an entity.

2. GRANT CONSTRUCTION.

The provisions of this Grant Agreement shall be construed in accordance with the provision of the Laws of the Commonwealth of Pennsylvania.

3. GRANT CONTROVERSIES.

- A. All questions or disputes arising between the parties hereto respecting any matter pertaining to this Grant Agreement or any part thereof or any breach of Grant arising thereunder must be filed as a written claim with the Contracting Officer within six months after the cause of action accrues. The claim shall be filed as of the date of receipt by the agency. The claim shall state all grounds upon which the Grantee asserts a controversy exists. If the Contractor fails to file a claim or files an untimely claim, the Grantee is deemed to have waived its right to assert a claim in any forum.
- B. The Contracting Officer shall review timely-filed claims and issue a determination, in writing, regarding the claim. The determination shall be issued within 120 days of the receipt of the claim, unless extended by consent of the Contracting Officer and the Grantee. The Contracting Officer shall send the written determination to the Contractor. If the Contracting Officer fails to issue a determination within the 120 day period, (unless extended by the consent of the parties), the claim shall be deemed denied. The Contracting Officer's determination shall be considered to be a decision of a subordinate officer, and shall be appealable to the Agency Head or his or her designee within 10 business days pursuant to 1 Pa. Code § 35.20. The matter before the agency shall be subject to 2 Pa. C.S. ch. 5, Subch. A (relating to practice and procedure of Commonwealth Agencies), and the rules set out in 1 Pa. Code Part II (relating to General Rules of Administrative Practice and Procedure). The Agency Head shall issue a final order which shall be appealable pursuant to 2 Pa. C.S. Ch. 7, Subch. A (relating to Judicial Review of Commonwealth Agency Action).
- C. The remedy set forth in this Paragraph (3) shall be the exclusive remedy for the Grantee to resolve such questions and disputes if the Grantee and the Department are unable to resolve them between themselves. Settlement of disputes under this provision must be prior to the final payment to Grantee.

4. INDEPENDENT CONTRACTOR.

The Grantee shall perform its services under this Agreement as an independent contractor and shall provide public liability, property damage and workers' compensation insurance, insuring as they may appear, the interests of all parties to the Agreement against any and all claims which may arise out of Grantee's operations under the terms of this Agreement. The Grantee shall accept full responsibility for the payment of premiums for workers' compensation and social security as well as all income tax deductions and any other taxes or payroll deductions required by law for its employees who are performing services specified by this Agreement.

5. DEPARTMENT HELD HARMLESS.

The Grantee shall hold the Commonwealth (including the Department) its officers, agents and employees, harmless against any and all claims, demands and actions based upon or arising out of any activities performed by the Grantee and its officers, agents and employees under this Grant, and shall, at the request of the Commonwealth, defend any

and all actions brought against the Commonwealth based upon any such claims or demands.

6. ASSIGNABILITY.

- A. Subject to the terms and condition of this Paragraph 6, this Grant Agreement shall be binding upon the parties and their respective successors and assignors.
- B. The Grantee may not assign, in whole or in part, this Grant Agreement or its rights, duties, obligations, or responsibilities hereunder without the prior written consent of the Contracting Officer, which consent may be withheld at the sole and absolute discretion of the Contracting Officer.
- C. Notwithstanding the foregoing, the Grantee may, without the consent of the Contracting Officer, assign its rights to payment to be received under the Grant Agreement, provided that the Grantee provides written notice of such assignment to the Contracting Officer together with a written acknowledgement from the assignee that any such payments are subject to all of the terms and conditions of this Grant Agreement.
- D. For the purposes of this Grant Agreement, the term "assign" shall include, but shall not be limited to, the sale, gift, assignment, pledge, or other transfer of any ownership interest in the Grantee provided, however, that the term shall not apply to the sale or other transfer of stock of a publicly traded company.
- E. Any assignment consented to by the Contracting Officer shall be evidenced by a written assignment agreement executed by the Grantee and its assignee in which the assignee agrees to be legally bound by all of the terms and conditions of the Grant Agreement and to assume the duties, obligations, and responsibilities being assigned.
- F. A change of name by the Grantee, following which the Grantee's Federal identification number remains unchanged, shall not be considered to be an assignment hereunder. The Grantee shall give the Contracting Officer written notice of any such change of name.

7. SUB-GRANTS.

Except for those sub-grants specifically authorized by this Grant Agreement, the Grantee shall not enter into sub-grants for any of the work contemplated under this Grant Agreement without obtaining prior written approval of the Department, which shall be attached to the original Grant Agreement, and subject to such conditions and provisions as the Department may deem necessary. PROVIDED, however, that notwithstanding the foregoing, unless otherwise provided herein, such prior written approval shall not be required for the purchase by Grantee of articles, supplies, equipment and services which are both necessary for and merely incidental to the performance of the work required under this Grant Agreement; and PROVIDED, further, however, no provision of this clause and no such approval by the Department of any sub-grant shall be deemed in any event in any manner to provide for the incurrence of any obligation of the Department in addition to the total agreed-upon price.

8. OTHER GRANTEES OR CONTRACTORS.

The Department may undertake or award other Grants or Contracts for additional or related work, and the Grantee shall fully cooperate with other Grantees or Contractors and Department employees and carefully fit its work to such additional work. The Grantee shall not commit or permit any act which will interfere with the performance of work by any other Grantee or Contractor or by Department employees.

This Paragraph shall be included in the contracts of all Grantees and Contractors with whom this Contractor will be required to cooperate. The Department shall equitably enforce this Paragraph as to all Grantees and Contractors to prevent the imposition of unreasonable burdens on any Grantee.

9. AVAILABILITY OF INFORMATION.

During the period of this Grant Agreement, all information obtained by the Grantee through work on the project shall be made available to the Department immediately upon demand.

10. RIGHT TO KNOW LAW.

- A. The Grantee or Sub-grantee understands that this Grant Agreement and records related to or arising out of the Grant Agreement are subject to requests made pursuant to the Pennsylvania Right-to-Know Law, 65 P.S. §§ 67.101-3104, ("RTKL"). For the purpose of these provisions, the term "the Commonwealth" shall refer to the

granting Commonwealth agency.

- B. If the Commonwealth needs the Grantee's or Sub-grantee's assistance in any matter arising out of the RTKL related to this Grant Agreement, it shall notify the Grantee or subgrantee using the legal contact information provided in the Grant Agreement. The Grantee or subgrantee, at any time, may designate a different contact for such purpose upon reasonable prior written notice to the Commonwealth.
- C. Upon written notification from the Commonwealth that it requires Grantee's or Sub-grantee's assistance in responding to a request under the RTKL for information related to this Grant Agreement that may be in Grantee's or subgrantee's possession, constituting, or alleged to constitute, a public record in accordance with the RTKL ("Requested Information"), Grantee or subgrantee shall:
 - (1) Provide the Commonwealth, within 10 calendar days after receipt of written notification, access to, and copies of, any document or information in Grantee's or Sub-grantee's possession arising out of this Grant Agreement that the Commonwealth reasonably believes is Requested Information and may be a public record under the RTKL; and
 - (2) Provide such other assistance as the Commonwealth may reasonably request, in order to comply with the RTKL with respect to this Grant Agreement.
- D. If Grantee or Sub-grantee considers the Requested Information to include a request for a Trade Secret or Confidential Proprietary Information, as those terms are defined by the RTKL, or other information that Grantee or Sub-grantee considers exempt from production under the RTKL, Grantee or Sub-grantee must notify the Commonwealth and provide, within seven calendar days of receiving the written notification, a written statement signed by a representative of Grantee or subgrantee explaining why the requested material is exempt from public disclosure under the RTKL.
- E. The Commonwealth will rely upon the written statement from Grantee or Sub-grantee in denying a RTKL request for the Requested Information unless the Commonwealth determines that the Requested Information is clearly not protected from disclosure under the RTKL. Should the Commonwealth determine that the Requested Information is clearly not exempt from disclosure, Grantee or Sub-grantee shall provide the Requested Information within five business days of receipt of written notification of the Commonwealth's determination.
- F. If Grantee or Sub-grantee fails to provide the Requested Information within the time period required by these provisions, Grantee or Sub-grantee shall indemnify and hold the Commonwealth harmless for any damages, penalties, costs, detriment or harm that the Commonwealth may incur as a result of Grantee's or Sub-grantee's failure, including any statutory damages assessed against the Commonwealth.
- G. The Commonwealth will reimburse Grantee or Sub-grantee for any costs associated with complying with these provisions only to the extent allowed under the fee schedule established by the Office of Open Records or as otherwise provided by the RTKL if the fee schedule is inapplicable.
- H. Grantee or Sub-grantee may file a legal challenge to any Commonwealth decision to release a record to the public with the Office of Open Records, or in the Pennsylvania Courts, however, Grantee or Sub-grantee shall indemnify the Commonwealth for any legal expenses incurred by the Commonwealth as a result of such a challenge and shall hold the Commonwealth harmless for any damages, penalties, costs, detriment or harm that the Commonwealth may incur as a result of Grantee's or Sub-grantee's failure, including any statutory damages assessed against the Commonwealth, regardless of the outcome of such legal challenge. As between the parties, Grantee or Sub-grantee agrees to waive all rights or remedies that may be available to it as a result of the Commonwealth's disclosure of Requested Information pursuant to the RTKL.
- I. The Grantee's or Sub-grantee's duties relating to the RTKL are continuing duties that survive the expiration of this Grant Agreement and shall continue as long as the Grantee or Sub-grantee has Requested Information in its possession.

11. FISCAL AND PROGRAM RECORDS.

- A. The Grantee agrees to maintain program and fiscal records required by the Department. For purposes of this Grant Agreement, "fiscal and program records" shall include, but not be limited to, books, records, documents, sub-grants or sub-contracts and other evidence pertaining to the costs and expenses of this Agreement, records relating services being provided, statistical information collected in the course of performing services, policies and procedures, information relating to staff and job descriptions, and all information necessary for the

Grantee to perform the work required under the Grant Agreement. The Grantee agrees that a program and facilities review, including meetings with consumers, review of service records, review of service policy and procedural issuances, review of staffing ratios and job descriptions, and meetings with any staff directly or indirectly involved in the provision of services may be conducted at any reasonable time by state and Federal personnel and other persons duly authorized by the Department.

- B. The Grantee agrees to maintain statistical records required by the Department to produce program narrative and statistical data at times prescribed by, and on forms furnished by the Department.
- C. The Grantee agrees to maintain fiscal records to the extent and in such detail as will properly reflect all net costs, direct and indirect, of labor, materials, equipment, supplies and services and other costs and expenses of whatever nature for which reimbursement is claimed under the provisions of this Grant. If Contractor is not a public body, Contractor agrees to maintain books, records, documents and other evidence in accordance with accounting procedures and practices which meet generally accepted accounting principles.
- D. If this Grant Agreement provides funding for a clinic or program which receives income or funding other than directly through this Grant Agreement (such as, but not limited to, third party reimbursement for patients), the Grantee agrees that all parts of this Paragraph 11 of these Standard General Terms and Conditions shall also apply to Contractor's records pertaining to such other sources of funding or income supporting the clinic or program.
- E. The Grantee agrees to make available at the Office of the Grantee at all reasonable times during the term of this Grant Agreement and the period set forth in Paragraph 12 below, any of the records for inspection, audit or reproduction by any authorized representative of the Department, the Department's Comptroller, the Auditor General, the Inspector General or Federal auditors.
- F. The provisions of this Paragraph 11 shall be applicable to and included in each sub-grant or sub-contract entered into by the Grantee in the performance of this Grant Agreement.
- G. The Grantee agrees to collect statistical data of a fiscal nature on a regular basis and to make fiscal statistical reports at times prescribed by, and on forms furnished by the Department.

12. RECORD RETENTION REQUIREMENTS.

All records kept pursuant to Paragraph 11 shall be retained pursuant to the provisions of this Paragraph 12.

- A. The Contractor shall preserve and make available its records for a period of four years from the date of final payment under this Agreement, and for such period, if any, as is required by applicable statute, by any other Paragraph of this Agreement, or by sub-paragraphs (1) or (2) below.
 - (1) If this Agreement is completely or partially terminated, the records relating to the work terminated shall be preserved and made available for a period of five years from the date of any resulting final payment.
 - (2) Records which relate to litigation or the settlement of claims arising out of the performance of this Agreement, or costs and expenses of this Agreement as to which exception has been taken by the auditors, shall be retained by the Contractor until such litigation, claims, or exceptions have been disposed of.
- B. Except for the records described in sub-paragraph A(2) above, the Contractor may, in fulfillment of its obligation to retain its records as required by this Paragraph, substitute photographs, microphotographs, or other authentic reproductions of such records, after the expiration of two years following the last day of the month of reimbursement to the Contractor of the invoice or voucher to which such records relate, unless a shorter period is authorized by the Department, with the concurrence of the auditors.

13. FEDERAL FUNDS.

The Grantee certifies that the Federal funds provided by this Agreement do not replace or supplant in any way any other funds, whether state, local or private, being used to provide already existing services. The Grantee further certifies that the services to be provided under this Agreement are not already available without cost. The Grantee further certifies that the addition of Federal funds will result in a commensurate program expansion.

14. QUALITY ASSURANCE.

Unless otherwise provided herein, the Grantee with due diligence shall furnish all necessary qualified personnel, material and equipment, managing and directing same to complete the work required by this Grant Agreement. The Grantee's work hereunder shall be monitored by the Project Officer and the Project Officer's designated representatives. If requested by the Department, The Grantee shall produce or provide special reports to the Department in a timeframe and format specified by the Department.

15. PROGRAM CHANGES.

The Project Officer may at any time, by written order, make changes in the statement of work, provided such changes are within the general scope of the statement of work and provided further that the total cost of this Grant Agreement is not exceeded. The Project Officer and the Grantee shall mutually determine whether the ordered changes can be accomplished within the total Grant Agreement cost and the extent of change, if any, in delivery schedules required by the ordered changes. Failure of the Project Officer and the Grantee to arrive at such mutual determinations shall be a dispute concerning a question of fact within the meaning of the Paragraph 2 of this Appendix entitled "Grant Construction." The Project Officer may not change the scope of work or increase the total cost of this Grant Agreement.

16. WRITTEN COMMITMENT.

Any written commitment or representation of the Grantee made within the scope of this Agreement shall, if accepted by the Project Officer in writing, be binding upon the Grantee and shall be incorporated as a part of this Grant Agreement.

17. KEY PERSONNEL.

The personnel specified in this Grant Agreement are considered to be essential to the work being performed hereunder. Prior to diverting any of the specified individuals to other programs, the Grantee shall notify the Project Officer reasonably in advance and shall submit justification including proposed substitutions, in sufficient detail to permit evaluation of the impact on the program. No diversion shall be made by the Grantee without the written consent of the Project Officer.

18. INSPECTION AND ACCEPTANCE.

Final inspection and acceptance of all work required under this Grant Agreement shall be performed by the Project Officer.

19. TRAVEL AND SUBSISTENCE COSTS.

The Department shall not be liable for travel or subsistence costs except as specifically set forth in this Grant Agreement.

20. OWNERSHIP RIGHTS.

A. Definition: The term "data," as used herein, includes but is not necessarily limited to written reports and analyses, diagrams, maps, system designs, computer programs, flow charts, software, magnetic tapes, diskettes, drawings, studies, manuals, brochures, advertisements, documents, sketches, papers, files, information, computer documentation, other tangible materials, and work of any similar nature which is required to be performed by or for the Contractor under this Grant or which is incidentally prepared by or for the Contractor in the performance of this Grant. Data includes background material prepared by or for the Contractor incidental to the performance of this Grant. Background material is defined as original work papers, notes, and drafts prepared by or for the Contractor to support conclusions in any final report or product delivered under this Grant, including but not limited to completed questionnaires, and material in electronic data processing form, computer programs, and other tangible materials produced by or for the Contractor during the term of this Grant and directly related to the services being rendered. It does not include Contractor's financial reports or other information incidental to Grant administration.

B. Preexisting Materials Brought by Contractor to the Project: The Department shall have no ownership rights to Contractor's data, proprietary materials, methodologies or other intellectual property that Contractor brings to the Project or has previously developed with or obtained from third parties. Contractor shall provide a list of all preexisting data, proprietary materials, methodologies or other intellectual property in connection with the Grant Agreement prior to starting work. Notwithstanding the foregoing provision, where materials brought by the Contractor to the Project are necessary to use the deliverables required under this Grant, the Contractor shall,

and hereby effectively does, grant to the Department a paid-up, nonexclusive, nontransferable license to use, modify, prepare derivative works, and to grant to third parties engaged by the Commonwealth the right to use, modify, and prepare derivative works, from all or any portion of the material brought by the Contractor to the Project.

- C. **Ownership of Data:** Any Data that fits the definition of "work made for hire," as that term is defined in United States copyright law, shall be considered a "work made for hire." All rights to these Data shall vest in the Department, which shall have sole and exclusive ownership of all Data. In the event that such Data do not fall within the specifically enumerated works that constitute "works made for hire" under the United States copyright laws, Contractor agrees to assign and, upon their authorship or creation, expressly and automatically assigns all copyright interests, proprietary rights, trade secrets, and other right, title and interest in and to such Data to the Department. The Department shall have the rights accorded a holder of copyright under the United States copyright laws including, but not limited to, the exclusive right to reproduce the Data in copies, the right to distribute copies by sale or other transfers, the right to register all copyrights in its own name as author in the United States and foreign countries, the right to prepare derivative works based upon the Data, and the right to display the Data. Upon completion or termination of this Agreement, Contractor shall immediately deliver all working papers, files, background material, and other documentation to the Department. Contractor warrants that the Data are original and do not infringe the rights of any other work.
- D. **Data Processing:** All computer programs, tapes, and software developed under this Agreement, and any data or information provided to the Department by diskette or electronic means, shall be compatible with Department computer systems. Specifications, if not included elsewhere in this Agreement, may be obtained from the Project Officer.
- E. **Federal Government Interests:** It is understood that certain funding under this Agreement may be provided by the Federal Government. Accordingly, the rights to Data of Contractors or subcontractors hereunder will be further subject to government rights as set forth in 37 C.F.R. Section 401, and other applicable statutes. Notwithstanding the foregoing, the Department retains the right to share information with the Federal Government relating to Data developed under a wholly state-funded Grant.
- F. **Defense of Infringement Claim:** The Contractor shall hold the Commonwealth harmless for any suit or proceeding brought against the Commonwealth, including the Department, or their officials or employees, on account of any alleged infringement of any United States or foreign copyrights, patents, trademarks, or trade secrets arising out of the performance of this Agreement, including any suit or proceeding relating to all work, services, materials, reports, studies and computer programs provided by the Contractor. The Contractor shall pay all damages and costs awarded therein against the Commonwealth. Pursuant to the Commonwealth Attorney's Act 71 P.S. § 732 – 101, et seq., the Office of Attorney General (OAG) has the sole authority to represent the Commonwealth in actions brought against the Commonwealth. The OAG may, however, in its sole discretion and under the terms it deems appropriate, delegate its right of defense. If information and assistance are furnished by the Commonwealth at Contractor's written request, it shall be at the Contractor's expense, but the responsibility for such expense shall be only that within the Contractor's written request. If any of the data, materials, reports, studies or computer programs provided by the Contractor are held to constitute infringement, and the use of publication thereof is enjoined in such suit or proceeding, the Contractor shall, at its own expense and at its option, either procure the right to publish or continue use of such infringing data, materials, reports, studies or computer programs, replace them with non-infringing items, or so modify them so that they are no longer infringing. If after a reasonable time and good faith effort, the Contractor is unable to comply with the requirements of the immediately preceding sentence, the Contractor shall return to the Department that portion of Grant funds expended by the Contractor in relation to the infringing item. The obligations of the Contractor under this Paragraph continue without time limit.

21. Department Approval and Attribution.

- A. All printed material is subject to written preapproval by the Department. "Printed material" includes, but is not limited to, notices, informational pamphlets, press releases, research reports, brochures, manuals, labels, newsletters, artwork, and print advertisements. All printed material must bear the Department logo and the names and titles of the Governor and the Secretary of Health unless otherwise authorized in writing by the Department's Contracting Officer. All material produced for radio and television must also be approved for quality of content and accreditation in writing by the Department's Contracting Officer prior to final production as well as after final production.
- B. Department attribution shall be at the Department's sole discretion. If the Department requires attribution on printed materials, the Contractor shall include the following statement on printed materials released by the

Contractor: "This project is funded, in part, under a Grant with the Pennsylvania Department of Health. Basic data for use in this study were supplied by the Pennsylvania Department of Health, Harrisburg, Pennsylvania. The Department takes no part in and is in no way responsible for any analyses, interpretations or conclusions," or another statement approved by the Department. If the Department requires attribution on materials produced for radio and television, the Contractor shall include a statement approved by the Department.

22. FORMS APPROVAL.

All forms, questionnaires, survey instruments, etc., developed under this Grant Agreement shall be subject to prior written approval by the Department.

23. CONFIDENTIALITY, SENSITIVE DOCUMENTS AND INFORMATION.

- A. The Grantee shall maintain the confidentiality of medical records of individuals served by the Grantee under this Agreement except to disclose such confidential information to the Department for purposes of consultation or the Department's monitoring of this Agreement.
- B. Sensitive Information: The Grantee shall not publish or otherwise disclose, except to the Department and except matters of public record, any information or data obtained hereunder from private individuals, organizations, or public agencies, in a publication whereby the information or data furnished by or about any particular person or establishment can be identified, except with the informed consent of such person or establishment.
- C. The Grantee shall not release any sensitive documents or information without the prior written approval of the Department. The term "sensitive documents or information" shall mean a document or information that contains the description, design, operational plan, or other vital information about a critical facility or infrastructure located in Pennsylvania and bordering states (e.g., nuclear power plants, hazardous chemical plant, oil refinery, bridge, dam, tunnel, etc.), or contains information about the operational protocols or emergency response capabilities of state and local agency personnel, the content of which could be used by a terrorist or enemy of the United States to plan an attack upon a critical facility located in Pennsylvania and bordering states or engage in other activities that could cause death or injury to fire, police, medical, military, or other emergency response personnel, public officials, or the general public.

24. COLLECTION OR RECORDING OF INFORMATION.

The Grantee shall submit to the Project Officer for written approval prior to use, copies of each questionnaire and survey plan, including plans for structured interviews and consultations, for the collection of information upon identical items from five or more individuals or organizational elements. The term "structured interview and consultation" is defined as an interview or consultation which follows a pre-designed line of questioning that takes approximately the same form for all the respondents being interviewed or consulted.

25. INTERESTS OF MEMBERS OF THE COMMONWEALTH AND OTHERS.

No officer, member or employee of the Commonwealth and no member of its General Assembly, who exercises any functions or responsibilities under this Agreement, shall participate in any decision relating to this Agreement which affects that person's personal interest or the interest of any corporation, partnership, or association in which that person is, directly or indirectly, interested; nor shall any such officer, member or employee of the Commonwealth or member of its General Assembly have any interest, direct or indirect, in this Agreement or the proceeds thereof.

26. INTEREST OF GRANTEE.

The Grantee covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of its services hereunder. The Grantee further covenants that in the performance of this Agreement, it shall not knowingly employ any person having such interest. Grantee further certifies that no member of the board of the Grantee or any of its officers or directors have such an adverse interest.

27. DEFAULT AND TERMINATION.

- A. The Department may, subject to the provisions of sub-paragraph C below, by written notice of default to the Grantee, immediately terminate upon such terms as said notice shall set forth, the whole or any part of this Agreement in any one of the following circumstances:

- (1) If the Grantee fails to perform the services within the time specified herein or any extension thereof; or
 - (2) If the Grantee fails to perform any of the other provisions of this Agreement, or so fails to make progress as to endanger its terms, and in either of these two circumstances does not cure such failure within a period of 10 days (or such longer period as the Department may authorize in writing) after receipt of notice from the Department specifying such failure.
- B. In the event the Department terminates this Agreement in whole or in part as provided in sub-paragraph A above, the Department may procure, upon such terms and in such manner as the Project Officer may deem appropriate, services similar to those so terminated and the Grantee shall be liable to the Department for any excess costs for such similar services, provided that the Grantee shall continue the performance of this Agreement to the extent not terminated under the provisions of this Paragraph 27.
- C. Except with respect to defaults of or sub-grantees, the Grantee shall not be liable for any excess costs if the failure to perform this Agreement arises out of causes beyond the control and without the fault or negligence of the Grantee. Such causes may include, but are not restricted to, acts of God or of the public enemy, acts of the Commonwealth of Pennsylvania in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restriction, strikes, freight embargoes, and unusually severe weather; but in every case the failure to perform must be beyond the control and without the fault or negligence of the Grantee. If the failure to perform is caused by the default of a sub-grantee, and if such default arises out of causes beyond the control of both the Grantee and sub-grantee and without the fault or negligence of either of them, the Grantee shall not be liable unless the services to be furnished by the sub-grantee were obtainable from other sources in sufficient time to permit the Grantee to meet the required delivery schedule.
- D. If this Agreement is terminated as provided in sub-paragraph A above, the Department shall require the Grantee to transfer title and deliver to the Department such partially completed reports or other documentation as the Grantee has produced under this Agreement. Payments for completed reports and other documentation delivered to and accepted by the Department shall be at the Agreement price. Payment for partially completed reports and other documentation delivered to and accepted by the Department shall be in an amount agreed upon by the Grantee and the Project Officer. Failure to agree to such amount shall be a dispute concerning a question of fact within the meaning of Paragraph 2 of this Appendix entitled "Grant Construction." The Department may withhold from amounts otherwise due the Grantee for such completed or partially completed reports or other documentation such sum as the Department determines to be necessary to protect it against loss because of outstanding liens or claims of former lien holders.
- E. The rights and remedies of the Department provided in this Paragraph 27 shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Grant Agreement.
- F. The Department may cancel this Grant Agreement, in whole or in part, at any time for the convenience of the Commonwealth by giving written notice to the Grantee. Should the Department exercise its rights under this clause, the Department will pay the Grantee for all work done by the Grantee under this Agreement until such time as the Department sets forth in its written notice to Grantee.
- G. Should the Grantee become insolvent, or if proceedings in bankruptcy shall be instituted by or against the Grantee, the remaining or unexpired portion of this Agreement may, at the election of the Department, be terminated.
- H. In addition, this Agreement may be cancelled by either party upon 30 days advance written notice.

28. GRANT CONTINGENT UPON LEGISLATIVE APPROPRIATION.

Payment hereunder is subject to the availability of state and/or Federal funds.

29. AVAILABILITY OR SUFFICIENCY OF DEPARTMENT FUNDS.

In addition to any other termination provision within this Grant Agreement, the Department may terminate this Grant Agreement at any time in the event funds, including, but not limited to, Federal program funds, become unavailable or are insufficient for Department program purposes. In such case, the Department will provide the Grantee with advance notice to the extent reasonable and possible under the circumstances to either terminate the Grant overall, or

suspend all or a portion of such Grant as determined by the Department and set forth in its notice to the Grantee. The Department will pay the Grantee for satisfactory work completed up until such termination or outside such suspension period, but in no event shall the Grantee be entitled to receive loss of profits.

30. COVENANT AGAINST CONTINGENT FEES.

The Grantee warrants that no person or selling agency has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for commission, percentage, brokerage or contingent fee (excepting bona fide employees or bona fide established commercial selling agencies maintained by the Grantee for the purpose of securing business). For breach or violation of this warranty, the Commonwealth shall have the right to annul this Grant Agreement without liability or, in its discretion, to deduct from the consideration otherwise due under this Grant Agreement, or otherwise recover, the full amount of such commission, percentage, brokerage or contingent fee.

31. ENVIRONMENTAL PROTECTION.

In carrying out this Grant Agreement, the Grantee shall minimize pollution and shall strictly comply with all applicable environmental laws and regulations.

32. EQUAL EMPLOYMENT OPPORTUNITY.

- A. The Grantee shall not discriminate against any employee, applicant for employment, independent contractor or any other person because of race, color, religious creed, ancestry, national origin, age, or sex. The Grantee shall take affirmative action to insure that applicants are employed, and that employees or agents are treated during employment, without regard to their race, color, religious creed, ancestry, national origin, age, or sex. Such affirmative action shall include, but is not limited to: employment, upgrading, demotion or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training. The Grantee shall post in conspicuous places, available to employees, agents, applicants for employment, and other persons, a notice to be provided by the contracting agency setting forth the provisions of this nondiscrimination clause.
- B. The Grantee shall, in advertisements or requests for employment placed by it or on its behalf, state that all qualified applicants will receive consideration for employment without regard to race, color, religious creed, ancestry, national origin, age, or sex.
- C. The Grantee shall send each labor union or workers' representative with which it has a collective bargaining agreement or other Grant or understanding, a notice advising said labor union or workers' representative of its commitment to this nondiscrimination clause. Similar notice shall be sent to every other source of recruitment regularly utilized by the Grantee.
- D. It shall be no defense to a finding of noncompliance with this nondiscrimination clause that the Grantee had delegated some of its employment practices to any union, training program, or other source of recruitment which prevents it from meeting its obligations. However, if the evidence indicates that the Grantee was not on notice of the third-party discrimination or made a good faith effort to correct it, such factor shall be considered in mitigation in determining appropriate sanction.
- E. Where the practices of a union or training program or other source of recruitment will result in the exclusion of minority group persons, so that the Grantee will be unable to meet its obligations under this nondiscrimination clause, the Grantee shall then employ and fill vacancies through other nondiscriminatory employment procedures.
- F. The Grantee shall comply with all state and Federal laws prohibiting discrimination in hiring or employment opportunities. In the event of the Grantee's noncompliance with the nondiscrimination clause of this Agreement or with any such laws, this Agreement may be terminated or suspended, in whole or in part, and the Grantee may be declared temporarily ineligible for further Commonwealth contracts or grants, and other sanctions may be imposed and remedies invoked.
- G. The Grantee shall furnish all necessary employment documents and records to, and permit access to its books, records, and accounts by, the Department and the Office of Administration, Bureau of Affirmative Action, for purposes of investigation to ascertain compliance with the provisions of this clause. If the Grantee does not possess documents or records reflecting the necessary information requested, it shall furnish such information on reporting forms supplied by the Department or the Bureau of Affirmative Action.

- H. The Grantee shall actively recruit minority sub-grantees or sub-grantees with substantial minority representation among their employees.
- I. The Grantee shall include the provisions of this nondiscrimination clause in every sub-grant or sub-contract, so that such provisions will be binding upon each sub-grantee.
- J. The Grantee obligations under this clause are limited to the Grantee's facilities within Pennsylvania, or where the Grant Agreement is for purchase of goods manufactured outside of Pennsylvania, the facilities at which such goods are actually produced.

33. EQUAL OPPORTUNITY FOR THE HANDICAPPED.

- A. The Grantee agrees to abide by Section 504 of the Rehabilitation Act of 1973, as amended (Public Law 93-112, 29 U.S.C. §794, as amended) and implementing Federal regulations. The Grantee assures that any benefits, services, or employment, available through the Grantee to the public by way of this Grant Agreement's funds, shall not be denied persons with handicaps who are otherwise qualified or eligible for the benefits, services, or employment available as a result of this Grant Agreement.
- B. The Grantee shall include the provisions of sub-paragraph A above in every sub-grant or sub-contract under this Grant Agreement so that such provision binds each sub-Grantee.

34. PROVISIONS CONCERNING THE AMERICANS WITH DISABILITIES ACT.

During the term of this Agreement, the Grantee agrees as follows:

- A. Pursuant to Federal regulations promulgated under the authority of the Americans With Disabilities Act, 28 C.F.R. §35.101 et seq., the Grantee understands and agrees that no individual with a disability shall, on the basis of the disability, be excluded from participation in this Grant Agreement or from activities provided for under this Agreement. As a condition of accepting and executing this Grant Agreement, the Grantee agrees to comply with the "General Prohibitions Against Discrimination," 28 C.F.R. §35.130, and all other regulations promulgated under Title II of The Americans With Disabilities Act which are applicable to the benefits, services, programs, and activities provided by the Commonwealth of Pennsylvania through contracts with outside contractors.
- B. The Grantee shall be responsible for and agrees to indemnify and hold harmless the Commonwealth of Pennsylvania from all losses, damages, expenses, claims, demands, suits, and actions brought by any party against the Commonwealth of Pennsylvania as a result of the Grantee's failure to comply with the provisions of sub-paragraph A above.
- C. The Contractor shall include the provisions of sub-paragraph A above in every sub-Grant under this Agreement so that such provision binds each subgrantee.

35. NONDISCRIMINATION/SEXUAL HARASSMENT CLAUSE.

The Grantee agrees:

- A. In the hiring of any employee(s) for the manufacture of supplies, performance of work, or any other activity required under the grant agreement or any subgrant agreement, contract, or subcontract, the Grantee, a subgrantee, a contractor, a subcontractor, or any person acting on behalf of the Grantee shall not, by reason of gender, race, creed, or color, discriminate against any citizen of this Commonwealth who is qualified and available to perform the work to which the employment relates.
- B. The Grantee, any subgrantee, contractor or any subcontractor or any person on their behalf shall not in any manner discriminate against or intimidate any of its employees on account of gender, race, creed, or color.
- C. The Grantee, any subgrantee, contractor or any subcontractor shall establish and maintain a written sexual harassment policy and shall inform their employees of the policy. The policy must contain a notice that sexual harassment will not be tolerated and employees who practice it will be disciplined.
- D. The Grantee, any subgrantee, contractor or any subcontractor shall not discriminate by reason of gender, race, creed, or color against any subgrantee, contractor, subcontractor or supplier who is qualified to perform the work to which the contracts relates.

- E. The Grantee, any subgrantee, any contractor or any subcontractor shall, within the time periods requested by the Commonwealth, furnish all necessary employment documents and records and permit access to their books, records, and accounts by the granting agency and the Bureau of Minority and Women Business Opportunities (BMWBO), for purpose of ascertaining compliance with provisions of this Nondiscrimination/Sexual Harassment Clause. Within 30 days after award of any grant, the Grantee shall be required to complete, sign and submit Form STD-21, the "Initial Contract Compliance Data" form. Grantees who have fewer than five employees or whose employees are all from the same family or who have completed the STD-21 form within the past 12 months may, within the 15 days, request an exemption from the STD-21 form from the granting agency.
- F. The Grantee, any subgrantee, contractor or any subcontractor shall include the provisions of this Nondiscrimination/Sexual Harassment Clause in every subgrant agreement, contract or subcontract so that those provisions applicable to subgrantees, contractors or subcontractors will be binding upon each subgrantee, contractor or subcontractor.
- G. The Commonwealth may cancel or terminate the grant agreement and all money due or to become due under the grant agreement may be forfeited for a violation of the terms and conditions of this Nondiscrimination/Sexual Harassment Clause. In addition, the granting agency may proceed with debarment or suspension and may place the Grantee, subgrantee, contractor, or subcontractor in the Contractor Responsibility File.

36. ADDITIONAL PROVISIONS RELATING TO NONDISCRIMINATION/ SEXUAL HARASSMENT.

- A. In the hiring of any employee(s) for the manufacture of supplies, performance of work, or any other activity required under the Contract or any subcontract, the Contractor each subcontractor, or any person acting on behalf of the Contractor or subcontractor shall not, by reason of religion, age, sexual preference, handicap or national origin discriminate against any citizen of this commonwealth who is qualified and available to perform the work to which the employment relates.
- B. Neither the Contractor nor any subcontractor or any person on their behalf shall in any manner discriminate against or intimidate any of its employees on account of religion, age, sexual preference, handicap or national origin.
- C. The Grantee, any subgrantee, contractor or any subcontractor shall not discriminate by reason of religion, age, sexual preference, handicap or national origin against any subgrantee, contractor, subcontractor or supplier who is qualified to perform the work to which the contracts relates.
- D. The Contractor and any subcontractors shall ensure that any services or benefits available to the public or other third parties by way of this Contract shall not be denied or restricted for such persons due to race, creed, color, religion, sex, sexual preference, age, handicap, or national origin (national origin protections include persons who are limited English proficient) consistent with the provisions of Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, Title II of the Americans with Disabilities Act and The Age Discrimination Act of 1975 as well as applicable provisions of the Omnibus Reconciliation Act of 1981.
- E. The Contractor and each subcontractor shall furnish all necessary employment documents and records to and permit access to its books, records, and accounts by the contracting officer and the Department of General Services' Bureau of Contract Administration and Business Development for purposes of investigation to ascertain compliance with the provisions of this Additional Provisions relating to Nondiscrimination/Sexual Harassment Clause. If the Contractor or any subcontractor does not possess documents or records reflecting the necessary information requested, it shall furnish such information on reporting forms supplied by the contracting officer or the Bureau of Contract Administration and Business Development.

37. DISPOSITION OF EQUIPMENT AND OTHER MATERIAL.

- A. The Grantee agrees to obtain all supplies and equipment for use in the performance of this Agreement at the lowest practicable cost and to purchase by means of a system of competitive bidding.
- B. Title to all property furnished by the Department shall remain with the Department. Title to all personal property acquired by the Grantee, including purchase by lease-purchase agreement, for the cost of which the Grantee is to be reimbursed under this Agreement, shall vest in the Grantee during the term of this Agreement. Upon cancellation or termination of this Agreement, such purchased personal property which has remaining useful life shall become the property of the Department, or at the election of and with written approval of the Department,

may be disposed of by the Grantee in accordance with the following provisions:

- (1) If the Grantee wishes to retain any items of such purchased property, both parties will arrange for an independent third-party appraisal of these property items and the Grantee will reimburse the Department for the value of the remaining useful life of the property on the basis of such appraisal. Unless otherwise agreed upon in writing by the Department, the Grantee shall be responsible for the cost of appraisal.
 - (2) Provided the Department is notified 10 days in advance of the date of the sale and the Grantee has the prior written permission of the Department and the approval of the Governor's Office of Budget, Grantee may sell the property. Grantee shall reimburse the Department for the Department's appropriate share.
- C. All property furnished by the Department or personal property acquired by the Grantee, including purchase by lease-purchase agreement, for which the Grantee is to be reimbursed under this Agreement shall be deemed Commonwealth property for the purpose of sub-paragraphs D, E, and F of this Paragraph.
 - D. Grantee shall maintain and administer in accordance with sound business practices a program for the maintenance, repair, protection, preservation and insurance of Commonwealth property so as to assure its full availability and usefulness.
 - E. The Commonwealth property and any property purchased under this Agreement shall, unless otherwise provided herein, or approved in writing by the Department and the Governor's Office of Budget, be used only for the performance of this Agreement.
 - F. In the event that Grantee is indemnified, reimbursed or otherwise compensated for any loss or destruction of or damage to the Commonwealth's property, Grantee shall use the proceeds to repair, renovate or replace the Commonwealth property involved, or shall credit such proceeds against the cost of the work covered by the Agreement, or shall otherwise reimburse the Department as directed by the Department.
 - G. Should the Grantee purchase equipment pursuant to this Agreement, the Grantee shall complete the Department's Equipment Inventory Form and return it to the Department with the Grantee's invoice which seeks reimbursement for such equipment under this Agreement. The Department will provide the Grantee with the form when this Agreement provides for the purchase of equipment.

38. GENERIC DRUGS.

If under this Agreement the Grantee prescribes or dispenses drugs to consumers, it shall do so in accordance with Act 259 of November 24, 1976, P.L. 1163, 35 P.S. §960.1 et seq., as amended, and prescribe and dispense generically equivalent drugs rather than brand name drugs whenever possible.

39. EXTENSION RIGHT.

The Commonwealth reserves the right, upon notice to the Grantee, to extend the term of the Grant Agreement for up to three months upon the same terms and conditions.

40. CONTRACTOR INTEGRITY PROVISIONS.

It is essential that those who seek to contract with the Commonwealth of Pennsylvania ("Commonwealth") observe high standards of honesty and integrity. They must conduct themselves in a manner that fosters public confidence in the integrity of the Commonwealth procurement process.

In furtherance of this policy, Contractor agrees to the following:

- A. Contractor shall maintain the highest standards of honesty and integrity during the performance of this contract and shall take no action in violation of state or Federal laws or regulations or any other applicable laws or regulations, or other requirements applicable to Contractor or that govern contracting with the Commonwealth.
- B. Contractor shall establish and implement a written business integrity policy, which includes, at a minimum, the requirements of these provisions as they relate to Contractor employee activity with the Commonwealth and Commonwealth employees, and which is distributed and made known to all Contractor employees.

- C. Contractor, its affiliates, agents and employees shall not influence, or attempt to influence, any Commonwealth employee to breach the standards of ethical conduct for Commonwealth employees set forth in the *Public Official and Employees Ethics Act, 65 Pa.C.S. §§1101 et seq.*; the *State Adverse Interest Act, 71 P.S. §776.1 et seq.*; and the *Governor's Code of Conduct, Executive Order 1980-18, 4 Pa. Code §7.151 et seq.*, or to breach any other state or Federal law or regulation.
- D. Contractor, its affiliates, agents and employees shall not offer, give, or agree or promise to give any gratuity to a Commonwealth official or employee or to any other person at the direction or request of any Commonwealth official or employee.
- E. Contractor, its affiliates, agents and employees shall not offer, give, or agree or promise to give any gratuity to a Commonwealth official or employee or to any other person, the acceptance of which would violate the *Governor's Code of Conduct, Executive Order 1980-18, 4 Pa. Code §7.151 et seq.* or any statute, regulation, statement of policy, management directive or any other published standard of the Commonwealth.
- F. Contractor, its affiliates, agents and employees shall not, directly or indirectly, offer, confer, or agree to confer any pecuniary benefit on anyone as consideration for the decision, opinion, recommendation, vote, other exercise of discretion, or violation of a known legal duty by any Commonwealth official or employee.
- G. Contractor, its affiliates, agents, employees, or anyone in privity with him or her shall not accept or agree to accept from any person, any gratuity in connection with the performance of work under the contract, except as provided in the contract.
- H. Contractor shall not have a financial interest in any other contractor, subcontractor, or supplier providing services, labor, or material on this project, unless the financial interest is disclosed to the Commonwealth in writing and the Commonwealth consents to Contractor's financial interest prior to Commonwealth execution of the contract. Contractor shall disclose the financial interest to the Commonwealth at the time of bid or proposal submission, or if no bids or proposals are solicited, no later than Contractor's submission of the contract signed by Contractor.
- I. Contractor, its affiliates, agents and employees shall not disclose to others any information, documents, reports, data, or records provided to, or prepared by, Contractor under this contract without the prior written approval of the Commonwealth, except as required by the *Pennsylvania Right-to-Know Law, 65 P.S. §§ 67.101-3104*, or other applicable law or as otherwise provided in this contract. Any information, documents, reports, data, or records secured by Contractor from the Commonwealth or a third party in connection with the performance of this contract shall be kept confidential unless disclosure of such information is:
 - (1) Approved in writing by the Commonwealth prior to its disclosure; or
 - (2) Directed by a court or other tribunal of competent jurisdiction unless the contract requires prior Commonwealth approval; or
 - (3) Required for compliance with Federal or state securities laws or the requirements of national securities exchanges; or
 - (4) Necessary for purposes of Contractor's internal assessment and review; or
 - (5) Deemed necessary by Contractor in any action to enforce the provisions of this contract or to defend or prosecute claims by or against parties other than the Commonwealth; or
 - (6) Permitted by the valid authorization of a third party to whom the information, documents, reports, data, or records pertain: or
 - (7) Otherwise required by law.
- J. Contractor certifies that neither it nor any of its officers, directors, associates, partners, limited partners or individual owners has been officially notified of, charged with, or convicted of any of the following and agrees to immediately notify the Commonwealth agency contracting officer in writing if and when it or any officer, director, associate, partner, limited partner or individual owner has been officially notified of, charged with, convicted of, or officially notified of a governmental determination of any of the following:

- (1) Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property.
- (2) Commission of fraud or a criminal offense or other improper conduct or knowledge of, approval of or acquiescence in such activities by Contractor or any affiliate, officer, director, associate, partner, limited partner, individual owner, or employee or other individual or entity associated with:
 - (a) obtaining;
 - (b) attempting to obtain; or
 - (c) performing a public contract or subcontract.

Contractor's acceptance of the benefits derived from the conduct shall be deemed evidence of such knowledge, approval or acquiescence.

- (3) Violation of Federal or state antitrust statutes.
- (4) Violation of any Federal or state law regulating campaign contributions.
- (5) Violation of any Federal or state environmental law.
- (6) Violation of any Federal or state law regulating hours of labor, minimum wage standards or prevailing wage standards; discrimination in wages; or child labor violations.
- (7) Violation of the *Act of June 2, 1915 (P.L. 736, No. 338)*, known as the *Workers' Compensation Act, 77 P.S. 1 et seq.*
- (8) Violation of any Federal or state law prohibiting discrimination in employment.
- (9) Debarment by any agency or department of the Federal government or by any other state.
- (10) Any other crime involving moral turpitude or business honesty or integrity.

Contractor acknowledges that the Commonwealth may, in its sole discretion, terminate the contract for cause upon such notification or when the Commonwealth otherwise learns that Contractor has been officially notified, charged, or convicted.

- K. If this contract was awarded to Contractor on a non-bid basis, Contractor must, (as required by *Section 1641 of the Pennsylvania Election Code*) file a report of political contributions with the Secretary of the Commonwealth on or before February 15 of the next calendar year. The report must include an itemized list of all political contributions known to Contractor by virtue of the knowledge possessed by every officer, director, associate, partner, limited partner, or individual owner that has been made by:

- (1) Any officer, director, associate, partner, limited partner, individual owner or members of the immediate family when the contributions exceed an aggregate of one thousand dollars (\$1,000) by any individual during the preceding year; or
- (2) Any employee or members of his immediate family whose political contribution exceeded one thousand dollars (\$1,000) during the preceding year.

To obtain a copy of the reporting form, Contractor shall contact the Bureau of Commissions, Elections and Legislation, Division of Campaign Finance and Lobbying Disclosure, Room 210, North Office Building, Harrisburg, PA 17120.

- L. Contractor shall comply with requirements of the *Lobbying Disclosure Act, 65 Pa.C.S. § 13A01 et seq.*, and the regulations promulgated pursuant to that law. Contractor employee activities prior to or outside of formal Commonwealth procurement communication protocol are considered lobbying and subjects the Contractor employees to the registration and reporting requirements of the law. Actions by outside lobbyists on Contractor's behalf, no matter the procurement stage, are not exempt and must be reported.

- M. When Contractor has reason to believe that any breach of ethical standards as set forth in law, the Governor's Code of Conduct, or in these provisions has occurred or may occur, including but not limited to contact by a Commonwealth officer or employee which, if acted upon, would violate such ethical standards, Contractor shall immediately notify the Commonwealth contracting officer or Commonwealth Inspector General in writing.
- N. Contractor, by submission of its bid or proposal and/or execution of this contract and by the submission of any bills, invoices or requests for payment pursuant to the contract, certifies and represents that it has not violated any of these contractor integrity provisions in connection with the submission of the bid or proposal, during any contract negotiations or during the term of the contract.
- O. Contractor shall cooperate with the Office of Inspector General in its investigation of any alleged Commonwealth employee breach of ethical standards and any alleged Contractor non-compliance with these provisions. Contractor agrees to make identified Contractor employees available for interviews at reasonable times and places. Contractor, upon the inquiry or request of the Office of Inspector General, shall provide, or if appropriate, make promptly available for inspection or copying, any information of any type or form deemed relevant by the Inspector General to Contractor's integrity and compliance with these provisions. Such information may include, but shall not be limited to, Contractor's business or financial records, documents or files of any type or form that refers to or concern this contract.
- P. For violation of any of these Contractor Integrity Provisions, the Commonwealth may terminate this and any other contract with Contractor, claim liquidated damages in an amount equal to the value of anything received in breach of these provisions, claim damages for all additional costs and expenses incurred in obtaining another contractor to complete performance under this contract, and debar and suspend Contractor from doing business with the Commonwealth. These rights and remedies are cumulative, and the use or non-use of any one shall not preclude the use of all or any other. These rights and remedies are in addition to those the Commonwealth may have under law, statute, regulation, or otherwise.
- Q. For purposes of these Contractor Integrity Provisions, the following terms shall have the meanings found in this Paragraph Q.
- (1) "Confidential information" means information that a) is not already in the public domain; b) is not available to the public upon request; c) is not or does not become generally known to Contractor from a third party without an obligation to maintain its confidentiality; d) has not become generally known to the public through a act or omission of Contractor; or e) has not been independently developed by Contractor without the use of confidential information of the Commonwealth.
 - (2) "Consent" means written permission signed by a duly authorized officer or employee of the Commonwealth, provided that where the material facts have been disclosed, in writing, by pre-qualification, bid, proposal, or contractual terms, the Commonwealth shall be deemed to have consented by virtue of execution of this contract.
 - (3) "Contractor" means the individual or entity that has entered into this contract with the Commonwealth, including those directors, officers, partners, managers, and owners having more than a five percent interest in Contractor.
 - (4) "Financial interest" means:
 - (a) Ownership of more than a five percent interest in any business; or
 - (b) Holding a position as an officer, director, trustee, partner, employee, or holding any position of management.
 - (5) "Gratuity" means tendering, giving or providing anything of more than nominal monetary value including, but not limited to, cash, travel, entertainment, gifts, meals, lodging, loans, subscriptions, advances, deposits of money, services, employment, or contracts of any kind. The exceptions set forth in the *Governor's Code of Conduct, Executive Order 1980-18, the 4 Pa. Code §7.153(b)*, shall apply.
 - (6) "Immediate family" means a spouse and any unemancipated child.
 - (7) "Non-bid basis" means a contract awarded or executed by the Commonwealth with Contractor without seeking bids or proposals from any other potential bidder or offeror.

- (8) "Political contribution" means any payment, gift, subscription, assessment, contract, payment for services, dues, loan, forbearance, advance or deposit of money or any valuable thing, to a candidate for public office or to a political committee, including but not limited to a political action committee, made for the purpose of influencing any election in the Commonwealth of Pennsylvania or for paying debts incurred by or for a candidate or committee before or after any election.

41. CONTRACTOR RESPONSIBILITY PROVISIONS.

For the purpose of these provisions, the term contractor is defined as any person, including, but not limited to, a bidder, offeror, loan recipient, grantee or lessor, who has furnished or performed or seeks to furnish or perform, goods, supplies, services, leased space, construction or other activity, under a contract, grant, lease, purchase order or reimbursement agreement with the Commonwealth of Pennsylvania (Commonwealth). The term contractor includes a permittee, licensee, or any agency, political subdivision, instrumentality, public authority, or other public entity in the Commonwealth.

- A. The Contractor certifies, in writing, for itself and its subcontractors required to be disclosed or approved by the Commonwealth, that as of the date of its execution of this Bid/Contract, that neither the Contractor, nor any such subcontractors, are under suspension or debarment by the Commonwealth or any governmental entity, instrumentality, or authority and, if the Contractor cannot so certify, then it agrees to submit, along with its Bid/Contract, a written explanation of why such certification cannot be made.
- B. The Contractor also certifies, in writing, that as of the date of its execution of this Bid/Contract it has no tax liabilities or other Commonwealth obligations, or has filed a timely administrative or judicial appeal if such liabilities or obligations exist, or is subject to a duly approved deferred payment plan if such liabilities exist.
- C. The Contractor's obligations pursuant to these provisions are ongoing from and after the effective date of the Contract through the termination date thereof. Accordingly, the Contractor shall have an obligation to inform the Commonwealth if, at any time during the term of the Contract, it becomes delinquent in the payment of taxes, or other Commonwealth obligations, or if it or, to the best knowledge of the Contractor, any of its subcontractors are suspended or debarred by the Commonwealth, the Federal government, or any other state or governmental entity. Such notification shall be made within 15 days of the date of suspension or debarment.
- D. The failure of the Contractor to notify the Commonwealth of its suspension or debarment by the Commonwealth, any other state, or the Federal government shall constitute an event of default of the Contract with the Commonwealth.
- E. The Contractor agrees to reimburse the Commonwealth for the reasonable costs of investigation incurred by the Office of State Inspector General for investigations of the Contractor's compliance with the terms of this or any other agreement between the Contractor and the Commonwealth that results in the suspension or debarment of the contractor. Such costs shall include, but shall not be limited to, salaries of investigators, including overtime; travel and lodging expenses; and expert witness and documentary fees. The Contractor shall not be responsible for investigative costs for investigations that do not result in the Contractor's suspension or debarment.
- F. The Contractor may obtain a current list of suspended and debarred Commonwealth contractors by either searching the Internet at <http://www.dgs.state.pa.us/> or contacting the:

Department of General Services
Office of Chief Counsel
603 North Office Building
Harrisburg, PA 17125
Telephone No: (717) 783-6472

42. GRANTEE OFFSET PROVISION.

The Grantee agrees that the Commonwealth of Pennsylvania (Commonwealth) may set off the amount of any state tax liability or other obligation of the Grantee or its subsidiaries to the Commonwealth against any payments due the Grantee under any Grant Agreement with the Commonwealth.

43. ASSIGNMENT OF ANTITRUST CLAIMS.

The Grantee and the Commonwealth recognize that in actual economic practice, overcharges by the Grantee's suppliers resulting from violations of state and Federal antitrust laws are in fact borne by the Commonwealth. As part of

the consideration for the award of this Grant Agreement, and intending to be legally bound, the Grantee assigns to the Commonwealth all right, title and interest in and to any claims the Grantee now has or may hereafter acquire under state or Federal antitrust laws relating to the goods or services which are the subject of this Grant Agreement.

44. LAWS AND REGULATIONS.

This Grant Agreement is subject to the provisions of all pertinent Federal, state, and local laws and regulations and all amendments made thereto. Definitions of service, eligibility of recipients of service, and other limitations on the purchase of the services established in this Grant Agreement are subject to modification by amendments to Federal, state and local laws and regulations without further notice to the Grantee.

45. CORPORATE PRACTICE OF MEDICINE DOCTRINE.

The Grantee shall comply with and not violate the corporate practice of medicine doctrine.

46. HUMAN RESEARCH.

The Grantee agrees that all human subject research (which includes but is not limited to the researcher obtaining identifiable private information or data through intervention or interaction with an individual) shall be prohibited unless the Grantee also certifies that prior written approval of its own or another Institutional Review Board (IRB) has been obtained or the research has been exempted, subject to all applicable laws, including but not limited to: 42 U.S. C. Section 3515(b) (relating to prohibitions on funding certain experiments involving human participants) and the regulations there under. Voluntary, informed consent of each subject shall be obtained. If the subject is a minor, or incompetent, the voluntary, informed consent of his or her legal guardian shall be required. The Grantee shall inform each potential subject prior to his or her consent that refusal will not result in the loss of any benefits to which the subject is otherwise entitled from the Federal government, the Commonwealth, the Grantee, any sub-grantee, or any third party insurer. Additionally, the Grantee agrees that all human subject research funded under this grant shall be submitted for review and approval to the Department of Health IRB on form number HD 1013F prior to the onset of research.

47. INTEGRATION CLAUSE.

The parties agree that this Grant Agreement constitutes the entire contract.

48. REPORTING REQUIREMENTS UNDER THE FEDERAL FUNDING ACCOUNTABILITY AND TRANSPARENCY ACT (FFATA).

A. Registration and Identification Information

The Grantee must maintain current registration in the Central Contractor Registration (www.ccr.gov) at all times during which they have active Federal awards funded pursuant to this agreement. A Dun and Bradstreet Data Universal Numbering System (DUNS) Number (www.dnb.com) is one of the requirements for registration in the Central Contractor Registration.

The Grantee must provide its assigned DUNS number, and DUNS + 4 number if applicable, to the Commonwealth along with Grantee's return of the signed grant agreement. The Commonwealth will not process this Grant Agreement until such time that the Grantee provides this information.

B. Primary Location

The Grantee must provide to the Commonwealth the primary location of performance under the award, including the city, State, and zip+4. If performance is to occur in multiple locations, then the Grantee must list the location where the most amount of the grant award is to be expended pursuant to this Grant Agreement.

The Grantee must provide this information to the Commonwealth along with the Grantee's return of the signed Grant Agreement. The Commonwealth will not process this Grant Agreement until such time that Grantee provides this information.

C. Compensation of Officers

The Grantee must provide to the Commonwealth the names and total compensation of the five most highly compensated officers of the entity **if--**

- (1) the entity in the preceding fiscal year received—
 - (a) 80 percent or more of its annual gross revenues in Federal awards; and
 - (b) \$25,000,000 or more in annual gross revenues from Federal awards; and
- (2) the public does not have access to information about the compensation of the senior executives of the entity through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986.

If the Grantee does not meet the conditions listed above, then it must specifically affirm to the Commonwealth that the requirements of this clause are inapplicable to the Grantee.

The Grantee must provide information responding to this question along with the Grantee's return of the signed grant agreement. The Commonwealth will not process this Grant Agreement until such time that Grantee provides such information responding to this question.